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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,462	10/23/2001	Chester G. Nelson	P-8851.00	4002
27581	7590	02/09/2006	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924			BOCKELMAN, MARK	
			ART UNIT	PAPER NUMBER
			3766	

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/035,462	Applicant(s) NELSON ET AL.	
	Examiner Mark W. Bockelman	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1-5-2006 has been entered.

Claim Rejections - 35 USC § 112

Claims 10-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The "self-discovery procedure" now claimed is inadequately described in the specification so as to provide a point of distinction in the claims. What is being actually accomplish or what the actual modes involved in the initialization procedure are at best vague.

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Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snell USPN 6,249,705 in view of Bowman-Amuah USPN 6,332,163.

Snell teaches a server arrangement comprising a server 102, a storage element (database 103) through which downloaded program updates pass through, and an interface 107 which may be wireless or modem (wires) for communicating with a plurality of network programmers 104_N. The network server can receive software updates which can then be downloaded to the network programmers. The network programmers are used to communicate and program a plurality of IMDs 105_N. Security measures established within the server/interface system are described in col. 4 lines 40+ and include the encryption of data and measures to protect patient data. Data integrity is performed so as to ensure the validity of data exchange, which thus intercepts data contaminants that may be included in the data. (i.e. viruses etc.) The transmission protocol may be TCP/IP as well as other types of internet protocol (column 3 lines 30-42).

Snell teaches wireless connections between the server and the IMD programmers but does not specifically mention optical fibers or radio transceivers, however such wireless interface transmissions are regarded as well

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known in the art. Additionally, Snell discusses the physical establishing a secure connection in the Table which the ordinary skilled artisan would understand as a login password or other similar security device that would deny unauthorized use. Finally, it is noted that to use a server administrator interface to service and to regulate transmission of information through the server was well known at the time of the invention.

While Snell does not teach Gateway server antivirus software, such is conventional as seen in Bowman-Amuah which uses a conventional software, namely "Netscape Proxy Server--high-performance server software for replicating and filtering access to Web content on the Internet or an intranet. Provides access control, URL filtering, and virus scanning." To implement the Snell system in a conventional internet with a gateway server having virus protect would have been obvious.

With respect to applicant's "self-discovery" procedure, applicants make no showing in the specification or in their arguments as to why the self-discovery is implemented, how it is implemented, or what it accomplishes. The language in the claim cannot be deemed to constitute a patentable device over the references. With no criticality, the addition is merely a design choice. Notwithstanding, since the Snell IMD make down load executable files, object files or tokenized files which require either direct downloads, compilation or interpreters, it would have been obvious to change the reception mode on the IMD to accept these different software files into the IMD.

Claims 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ji et al 5,623,600 in view of Snell USPN 6,249,705.

Applicant's apparent point of novelty is the provision of a security at the level of the server in an internet based communication system for serving programmable IMD's. Ji et al is cited as demonstrating Servers with data integrity assuring means that scan file for viruses (etc.) to intercept corrupt data were well known at the time of applicant's invention. In some of the embodiments of Snell, the network programmer does not perform any network programming functions (column 5 lines 55-67) but instead receive programming from the network server. Thus the server of Snell would have to have some type of storage device, even if only temporary. To be able to download software updates and then transmit them would require server storage. In addition, Ji (reference numerals 650,652) teaches the temporary storage of such files for virus analysis (figure 6c). To have provided the use of such a server for transmitting data to IMD programmers would have been obvious given that server based IMD programming systems were also known at the time of applicant's invention, which is demonstrated to be true by the citation of Snell 6,249,705.

See the discussion above regarding the "self-discovery" procedure as taught or obvious to Snell.

Response to Arguments

Applicant's arguments filed 1-5-2006 have been fully considered but they are not persuasive. As noted above under the rejections of 112 first paragraph

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and 35 USC 103, applicant's new claim language does not provide a patentable distinction over the applied art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 10:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272 -6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MWB

February 5, 2006


MARK BOCKELMAN
PRIMARY EXAMINER